



COUNTY OF LOS ANGELES
CLAIMS BOARD

500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

March 15, 2004

MEMBERS OF THE BOARD

Maria M. Oms
Auditor-Controller
Lloyd W. Pellman
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: Rafael Lopez v. County of Los Angeles
United States District Court Case No. CV 97-3347

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$250,000.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Department of Children and Family Services.

Enclosed is the settlement request and a summary of the facts of the case.

The Corrective Action Report is being transmitted to you under separate cover by the Department of Children and Family Services.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosures

MEMORANDUM

March 4, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: CLAY AVERBUCK
Monroy, Averbuck, and Gysler

ROGER H. GRANBO
Principal Deputy County Counsel
General Litigation Division

RE: Rafael Lopez v. County of Los Angeles
United States District Court Case No. CV-97-3347

DATE OF
INCIDENT: May 1996

AUTHORITY
REQUESTED: \$250,000

COUNTY
DEPARTMENT: Department of Children and Family Services

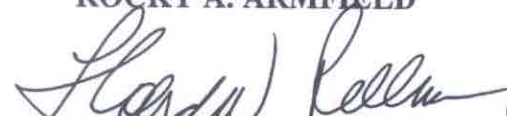
CLAIMS BOARD ACTION:


☐ Approve

☐ Disapprove

☒ Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY A. ARMFIELD


_____, County Counsel
LLOYD W. PELLMAN


_____, Auditor-Controller
MARIA M. OMS

on March 15, 2004

SUMMARY

This is a recommendation to settle for \$250,000, a wrongful death lawsuit filed by Rafael Lopez, whose two children were murdered by their mother while the family was under the supervision of the Department of Children and Family Services.

LEGAL PRINCIPLES

A public entity and its employees that supervise dependent children of the Juvenile Court may be held liable for injuries to those children if the employees fail to discharge a duty that is mandated by a statute, the statute is intended to protect against the kind of risk of injury suffered by the child, and the breach of the mandatory duty is a proximate cause of the injury.

SUMMARY OF FACTS

In September 1994, Rafael Lopez' two children became dependent children of the Juvenile Court based on allegations that Rafael Lopez had sexually molested his son, and physically abused his daughter. These allegations were made while Rafael Lopez and his then wife, Martha Lopez, were going through a divorce and custody proceeding. The Court ordered that the children continue living with their mother, Martha Lopez, and Rafael Lopez was awarded monitored visitation.

In April 1996, Rafael Lopez filed a petition in the Juvenile Court requesting that the children be removed from their mother. Rafael Lopez believed that Martha Lopez was negatively impacting his relationship with his children. When the Children's Social Worker (CSW) sent out notice of the hearing on the petition, she mistakenly indicated on the form that she was recommending a change in the placement of the children when, in fact, she was not.

On May 16, 1996, after Martha Lopez and the children failed to appear at the next Juvenile Court hearing, the CSW called the children's school and was informed that they had not been in school since May 3, 1996. Further, Martha Lopez failed to bring the children to their visit with their father on May 4, 1996, at the office of the family's therapist. The CSW requested that the Court issue warrants of arrest for Martha Lopez and the children.

On May 26, 1996, a neighbor of Martha Lopez reported to the Sheriff's Department that a foul odor was emanating from Martha Lopez' home. Sheriff's Deputies entered the home and found the remains of the two children, ages 7 and 4, in a state of advanced decomposition. On May 28, 1996, Martha

Lopez was arrested for the murder of her two children, and Graciela Israel, Martha Lopez' mother, was arrested for aiding and abetting in the murders.

Graciela Israel was acquitted of the charges against her. In August 1999, Martha Lopez was found not guilty by reason of insanity, and is currently incarcerated at Patton State Hospital.

In his lawsuit, Rafael Lopez contends that the Department and its CSW's should have known of Martha Lopez' mental instability, and removed the children from her care.

DAMAGES

Should this matter proceed to trial, we estimate the potential damages could be as follows:

Loss of care, comfort and society	\$1,000,000
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The settlement calls for the County to pay \$250,000 to Rafael Lopez for all of his claims for damages, costs, and attorney fees.

STATUS OF CASE

The trial court proceedings have been suspended pending consideration of the recommended settlement.

Expenses incurred by the County in defense of this action are attorney fees of \$236,399 and \$24,474 in costs. The fees and costs are relatively high in this case that has been pending since 1997. Rafael Lopez' attorney litigated the case very aggressively, requiring our attorneys to respond to voluminous discovery, and attend numerous court hearings and depositions. We also filed a petition for a writ, and a separate appeal in the Ninth Circuit Court of Appeal challenging two of the United States District Court rulings.

We have tried to settle the matter numerous times over the years, but Rafael Lopez' settlement demand began at \$8 million. Not until shortly before the final trial date, which had been continued five times, was the demand lowered to \$1,300,000. A proposed settlement was recently agreed upon at a settlement conference with a United States Magistrate judge.


EVALUATION

This is a case of questionable liability. Rafael Lopez contends that the County should have known that Martha Lopez was a danger to her children, and removed the children from her care. He bases that contention on the fact that in 1990, Martha Lopez worked at a County health care facility, and was placed on disability due to psychological problems. However, during the course of her workers' compensation action in 1990, and through the Juvenile Court proceedings in 1994 through 1996, Martha Lopez was evaluated by three psychiatrists and two psychologists, none of whom felt that she was a danger to her children.

While the liability in this case is questionable, the sympathy of the jury will be with Rafael Lopez, whose two children were murdered while under the supervision of the Department of Children and Family Services. A reasonable settlement will avoid the possibility of a large verdict from a sympathetic jury, in an amount that would likely exceed the proposed settlement.

We join with our private counsel, Monroy, Averbuck, and Gysler, and our third party administrator, Carl Warren and Company, in recommending a settlement of this matter in the amount of \$250,000. The Department of Children and Family Services concurs with the recommendation.

APPROVED:



GARY N. MILLER
Assistant County Counsel
General Litigation Division

RHQ:scr